

RULEMAKING NOTICE FORM

Notice Number **2009-39**

Rule Number **He-M 306**

1. Agency Name & Address:

**Department of Health and Human Services
Bureau of Behavioral Health
129 Pleasant St, Brown Bldg
Concord, NH 03301**

2. RSA Authority: **RSA 135-C:57, III, V; 61, XI**

3. Federal Authority: **N/A**

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment **X**

5. Short Title: **Medical and Psychiatric Emergencies**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

He-M 306 is a rule that contains procedures by which an patient involuntarily admitted to New Hampshire Hospital may receive authorized emergency treatment for a period not to exceed 45 days, when it is determined that the patient lacks the capacity to make an informed treatment decision.

Amendments to the current rule include: (1) adjustments to job titles and terminology; (2) an altered definition of psychiatric emergency to reflect a patient's deterioration and continued decompensation of mental status are to be measured by the manifested exacerbation of *psychiatric* symptoms versus *psychotic* symptoms; (3) a broadened definition of a "single involuntary admission," which includes periods of admission following a revocation of a patient's conditional discharge; and (4) authorization of a maximum of two requests for involuntary emergency treatment per "single involuntary admission" period.

6. (b) Brief description of the groups affected:

Persons affected by these rules include involuntarily admitted persons with mental illness residing at New Hampshire Hospital relative to a court order pursuant to RSA 135-C:34-54.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Number	RSA/Federal Citation
He-M 306.01 - 306.06	RSA 135-C:57, III, V
He-M 306.07	RSA 135-C:60
He-M 306.08	RSA 135-C:57, III, V

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Maya Blanchette	Title:	Rules Coordinator
Address:	Office of Program Support Brown Building 129 Pleasant Street Concord, NH 03301	Phone #:	271-4190
		Fax#:	271-5590
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.state.nh.us/DHHS/ADMINRULEMAKING/default.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday, May 4, 2009**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, April 23, 2009, at 2 PM**

Place: **129 Pleasant St., Brown Building, Auditorium, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **09:033**, dated **3/13/09**

Fiscal Impact Statement for Department of Health and Human Services rules governing Medical and Psychiatric Emergencies. [He-M 306]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing and the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

There are no costs or benefits attributable to the proposed rules.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rule does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

TABLE OF CONTENTS

CHAPTER 300 RIGHTS

PART He-M 306 MEDICAL AND PSYCHIATRIC EMERGENCIES

Section He-M 306.01	Purpose	1
Section He-M 306.02	Definitions	1
Section He-M 306.03	Emergency Treatment Authorized	2
Section He-M 306.04	Criteria for Emergency Treatment	2
Section He-M 306.05	Hearing	3
Section He-M 306.06	Decision	3
Section He-M 306.07	Guardianship	4
Section He-M 306.08	Treatment Limitations	4

BUREAU OF BEHAVIORAL HEALTH
Hugh J. Gallen State Office Park
105 Pleasant Street
Concord, NH 03301

Readopt with amendment He-M 306, effective 9-25-01 (document #7559), cited and to read as follows:

CHAPTER He-M 300 RIGHTS

PART He-M 306 MEDICAL AND PSYCHIATRIC EMERGENCIES

Statutory Authority: RSA 135-C:57, III, V; 61, XI

He-M 306.01 Purpose. The purpose of these rules is to establish procedures by which an individual involuntarily admitted to New Hampshire hospital has emergency treatment authorized when he or she has been determined to lack the capacity to make an informed treatment decision.

He-M 306.02 Definitions.

(a) "Administrator" means the chief executive officer of New Hampshire hospital or, in the absence of the administrator, the executive person in charge of the facility.

~~— (a) "Client" means a person involuntarily admitted to New Hampshire hospital by order of a probate court pursuant to RSA 135-C:34-54.~~

~~— (b) "Director" means the director of the division of behavioral health of the department of health and human services.~~

~~— (c) "Division" means the division of behavioral health of the department of health and human services.~~

~~(d)~~ "Lack of capacity" means the inability of a person, after efforts have been made to explain the nature, effects, and risks of the proposed treatment and alternatives to the proposed treatment, to engage in a rational decision-making process regarding the proposed treatment as evidenced by his⁴ ~~or~~ her inability to weigh the nature, purpose, risks, and benefits of the proposed treatment and any available alternatives and the likely consequences of refusing treatment.

~~(e)~~ "Involuntary admission" means admission to New Hampshire hospital pursuant to RSA 135-C:34-54.

~~(f)~~ "Medical emergency" means a physical condition of a ~~client~~ patient which, if not treated, will result in an immediate, substantial, and progressive deterioration of a serious physical illness.

(e) "Patient" means a person involuntarily admitted to New Hampshire hospital by order of a probate court pursuant to RSA 135-C:34-54.

~~(g)~~ "Presiding officer" means an individual who has been delegated authority by the commissioner of the department of health and human services, in accordance with RSA 126-A:5, III, to render decisions on appeals under RSA 126-A:5, VIII.

~~(h)~~ "Psychiatric emergency" means a mental condition of a ~~client~~ patient, resulting from mental illness, which, if not treated promptly, likely will result in either:

(1) Imminent danger of harm to the client/patient or others as evidenced by:

- a. Symptoms that in the past have immediately preceded acts of harm to self or others;
or
- b. A recent overt act including, but not limited to, an assault, or self injurious behavior when the likelihood of preventing such harm would be substantially diminished if treatment is delayed;

(2) Deterioration of the client/patient's mental status from his ^{or} her usual mental status as manifested by exacerbation of ~~psychotic~~ psychiatric symptoms when the likelihood of stabilizing and reversing such deterioration would be substantially diminished if treatment is delayed; or

(3) Continued decompensation of the client/patient's mental status from his or her usual mental status as manifested by persistent ~~psychotic~~ psychiatric symptoms when there is a reasonable likelihood that such symptoms could be alleviated if treatment could be administered to the client/patient.

(h) "Treatment" means a recognized and approved form of medical or psychiatric care that:

- (1) Is provided by a physician, or a person acting under the direction of a physician;
- (2) Is provided in accordance with generally accepted clinical and professional standards;
and
- (3) Does not include:
 - a. Psychosurgery;
 - b. Electroconvulsive therapy;
 - c. Sterilization; or
 - d. Experimental treatment of any kind.

He-M 306.03 Emergency Treatment Authorized. A physician, or a person acting under the direction of a physician, shall administer treatment to a client/patient, without the consent of the client/patient, when authorization is granted by the presiding officer pursuant to the provisions set forth below.

He-M 306.04 Criteria for Emergency Treatment.

(a) A treating physician shall submit a written request for treatment authorization to the department's administrative appeals unit, the ~~director~~ administrator, and the client/patient if he or she determines that:

- (1) The involuntarily admitted client/patient cannot make a decision regarding his or her treatment due to lack of capacity;
- (2) A medical or psychiatric emergency exists;
- (3) The client/patient does not have a guardian authorized to make medical decisions; and

(4) A reasonable person would consent to the administration of emergency treatment.

(b) A physician's request for treatment authorization submitted pursuant to (a) above shall contain the following information:

(1) A description of the efforts that have been made to inform the client/patient of the nature, effects and risks of the proposed treatment and facts demonstrating that, despite this effort, the client/patient lacks the capacity to make an informed decision with respect to the medical or psychiatric treatment offered;

(2) A statement of facts which indicate that a medical or psychiatric emergency exists;

(3) A description of the proposed treatment, including:

- a. Its anticipated therapeutic benefit;
- b. Its potentially significant risks; and
- c. The nature and severity of possible side effects;

(4) A statement indicating what supports or treatment, if any, that the client/patient has agreed to accept and why provision of such treatment would not ameliorate the medical or psychiatric emergency; and

(5) The reasons why a delay in treatment would:

a. In the case of a medical emergency, likely result in an immediate, substantial, and progressive deterioration of a serious physical illness; or

b. In the case of a psychiatric emergency:

1. Substantially diminish the likelihood of preventing imminent harm to the client/patient or others;

2. Substantially diminish the likelihood of stabilizing or reversing the client/patient's deteriorating mental status; or

3. Result in continued decompensation of the client/patient's mental status from his or her usual mental status as manifested by persistent ~~psychotic~~ psychiatric symptoms when there is a reasonable likelihood that such symptoms could be alleviated if treatment could be administered to the client/patient.

He-M 306.05 Hearing. Upon receipt of the physician's written request for treatment authorization, the presiding officer shall:

(a) Schedule a hearing to be held as soon as reasonably possible and, in any event, within 3 working days of the date of receipt of the written request for treatment authorization;

(b) Notify the legal staff of New Hampshire hospital of the client/patient's need for legal counsel; and

(c) Conduct a hearing in accordance with He-C 204.

He-M 306.06 Decision.

(a) Within 2 working days of the hearing, the presiding officer shall issue a written decision.

(b) The presiding officer shall authorize the proposed treatment if the presiding officer determines that the State has demonstrated, by clear and convincing evidence, that each of the following criteria ~~is~~^{are} met:

(1) The ~~client~~^{patient} lacks the capacity to make an informed decision with respect to the proposed treatment;

(2) A medical or psychiatric emergency exists that would:

a. In the case of a medical emergency, likely result in an immediate, substantial, and progressive deterioration of a serious physical illness; or

b. In the case of a psychiatric emergency:

1. Substantially diminish the likelihood of preventing imminent harm to the ~~client~~^{patient} or others;

2. Substantially diminish the likelihood of stabilizing or reversing the ~~client~~^{patient}'s deteriorating mental status; or

3. Result in continued decompensation of the ~~client~~^{patient}'s mental status from his or her usual mental status as manifested by persistent ~~psychotic~~^{psychiatric} symptoms when there is a reasonable likelihood that such symptoms could be alleviated if treatment could be administered to the ~~client~~^{patient};

(3) The proposed treatment is the least restrictive appropriate alternative available;

(4) The ~~client~~^{patient} does not have a guardian authorized to make treatment decisions; and

(5) A reasonable person would consent to the administration of emergency treatment.

(c) The presiding officer shall not authorize emergency treatment for a period of more than 45 days except as provided in He-M 306.08 (d).

He-M 306.07 Guardianship. During the course of the authorized treatment period, New Hampshire hospital staff shall assess the ~~client~~^{patient}'s need for the appointment of a guardian ~~shall be assessed~~ and take actions consistent with RSA 135-C:60 ~~shall be taken~~.

He-M 306.08 Treatment Limitations.

(a) No involuntary treatment shall be imposed pursuant to a request for authority to administer emergency treatment prior to a decision being rendered by the presiding officer in accordance with He-M 306.06 except in accordance with He-M 305, personal safety emergencies.

(b) Treatment shall not be administered to a voluntarily admitted individual who refuses to accept it.

(c) The ~~medical director~~^{chief medical officer} of New Hampshire hospital ~~or his designee~~ shall monitor treatment provided pursuant to He-M 306.03 at least every 7 days through review with the

attending physician and order discontinuation of the treatment authorization upon determination that the criteria for treatment authorization no longer exist.

(d) No episode(s) of involuntary medical or psychiatric emergency treatment at New Hampshire hospital shall be authorized for more than 45 consecutive days.

(e) No more than one additional written request for emergency treatment authorization shall be submitted per single involuntary admission period.

(f) Single involuntary admission shall mean:

(1) The period of involuntary admission following the order of the probate court pursuant to RSA 135 C-34-54; or

(2) Any subsequent period of involuntary admission following an absolute revocation of conditional discharge.

~~——(d) No more than 45 days of involuntary treatment based on a medical or psychiatric emergency shall be authorized for any client during any single involuntary admission to New Hampshire Hospital.~~

~~(e) Involuntary admissions shall include periods of commitment ordered by a probate court in accordance with the provisions of RSA 135 C:34-54 as well as subsequent admissions as a result of revocation(s) of conditional discharge occurring within the duration of the commitment period authorized by the probate court.~~

(g) The authorization to provide emergency treatment to the client/patient shall immediately expire if a guardian over the person of the client/patient with authority to make treatment decisions is appointed during the period of emergency treatment authorized by the presiding officer.

APPENDIX

IMPLEMENTED STATUTES

Section:	Statute:
He-M 306.01 - 306.06	RSA 135-C:57, III, V
He-M 306.07	RSA 135-C:60
He-M 306.08	RSA 135-C:57, III, V